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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 707

JOHN HORACE CORRELL,

Petitioner,

vs.

THE STATE OF NORTH CAROLINA,

Respondent

BRIEF OF THE STATE OF NORTH CAROLINA, RESPONDENT, OPPOSING PETITION FOR WRIT OF CERTIORARI.

HARRY MCMULLAN,
Attorney General;
T. W. BRUTON,
Assistant Attorney General,
Counsel for the State of North Carolina, Respondent.

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Authorities Cited

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Statement of the Case

The defendant was originally tried at the March Term, 1947, of the Superior Court of Wilkes County, and convicted of manslaughter, and given a sentence of from three to five years in the State's Prison. He appealed to the Supreme Court of North Carolina, and a new trial was awarded. 228 N. C. 28, 44 S. E. (2d) 334. The case came on for a new trial at the June Term, 1948, of The Superior Court of Wilkes County, and the defendant was convicted of second degree murder and was given a sentence of from seven to ten years in the State's Prison. He appealed to the Supreme Court of North Carolina and his conviction was affirmed.

The Petitioner, John Horace Correll, seeks, by writ of *certiorari,* to have the Supreme Court of the United States review this decision of the Supreme Court of North Carolina affirming a judgment of the Superior Court of Wilkes County, North Carolina, imposing sentence upon the Petitioner based upon a conviction of the crime of second degree murder. The opinion of the Supreme Court of North Carolina was filed on the 15th of December, 1948, and is reported as *State* v. *John Horace Correll,* 229 N. C. 640, 50 S. E. (2d) 717.

Facts

The evidence for the State discloses that on the night of the 28th of December, 1946, between 7:30 and 8 o'clock, the defendant and Faye Fields came to a tavern operated by the deceased and his brother, located on a highway near Wilkesboro, North Carolina. They had dinner and afterwards, until about 12:30 or 1 o'clock, they were dancing and drinking. At this time, they attempted to leave the tavern; but the car of the defendant would not start. They came back into the tavern and the defendant and the deceased entered into a dice game, during the course of which an argument ensued between them and the defendant slapped the deceased in the face, whereupon the deceased ordered the defendant out of his establishment. The defendant refused to leave and more hot words passed between the two. The deceased went behind the bar in the establishment and the defendant followed him, saying that he would not leave the place until he got good and ready. The deceased secured a gun from under the cash register and the defendant then backed out from behind the bar, stationed himself behind his girl friend Miss Fields, drew a gun either from his pocket or from the pocketbook of Miss Fields, and pointing the gun around her shoulder, fired at

the deceased. The shot entered the deceased's head over his left eye, and he died shortly thereafter as a result of this wound.

ARGUMENT

I

The objection to the argument of counsel in the trial of the case below raises no Federal question.

The Fourteenth Amendment does not draw to itself the provisions of state constitutions or state laws. It leaves the states free to enforce their criminal laws under such statutory provisions and common-law doctrines as they may deem appropriate; and it does not permit a party to bring to the test of a decision in the Supreme Court of the United States every ruling made in the course of a trial in a state court.

The making of statements by the district attorney in the course of a criminal trial do not raise a due process question reviewable in the Supreme Court of the United States.

Buchalter v. *New York*, 319 U. S. 427, 87 L. Ed. 1492.

II

The Constitutional privileges and immunities of a citizen are not abridged by an error of the court in the charge to the jury in a criminal case.

A substantial error in the charge to the jury in a criminal case does not deprive the prisoner of the equal protection of the laws.

Davis v. *Texas*, 139 U. S. 651, 35 L. Ed. 300.

Errors of a state court in interpreting and applying the laws of that state furnish no basis for the claim that there has been a denial of the due process of law guaranteed by the Fourteenth Amendment to the Federal Constitution.

Howard v. *Kentucky,* 200 U. S. 164, 50 L. Ed. 421.

The Constitution of the United States does not guarantee that the decisions of state courts shall be free from error or require that their pronouncements shall be consistent.

Worcester County Trust Co. v. *Riley,* 302 U. S. 292, 82 L. Ed. 268.

Where the proceedings in the state court were conducted under the ordinary forms of criminal prosecutions, there was no denial of due process of law.

Miller v. *Texas,* 153 U. S. 535, 38 L. Ed. 812.

The due process clause of the Fourteenth Amendment does not operate to enforce upon the states a uniform code of criminal procedure; and it is for them to choose the methods and practices by which crime is brought to book so long as they observe those ultimate dignities of man which the United States Constitution assures.

Carter v. *Illinois,* 329 U. S. 173, 91 L. Ed. 172.

III

A conviction in a State court of murder in the second degree on a second trial of a criminal prosecution after a conviction of manslaughter had been set aside on appeal does not abridge the constitutional privileges and immunities of a citizen, nor has the defendant been twice placed in jeopardy for the same offense.

A conviction in a state court of murder in the first degree on a second trial of a criminal prosecution after a convic-

tion of murder in the second degree had been set aside on an appeal taken by the state is not in derogation of any privileges or immunities that belong to the accused as a citizen of the United States in violation of the Fourteenth Amendment.

Palko v. *Connecticut*, 302 U. S. 319, 82 L. Ed. 288.

It is well settled under the decisions of the Supreme Court of North Carolina that when on appeal by a defendant from a judgment on a verdict of guilty in a criminal prosecution a new trial is ordered, the case goes back to be tried on the original bill of indictment.

State v. *Stanton*, 23 N. C. 424;
State v. *Grady*, 83 N. C. 643;
State v. *Bridgers*, 87 N. C. 562;
State v. *Craine*, 120 N. C. 601, 27 S. E. 72;
State v. *Groves*, 121 N. C. 563, 28 S. E. 262;
State v. *Freeman*, 122 N. C. 1012, 29 S. E. 94;
State v. *Gentry*, 125 N. C. 733, 34 S. E. 706;
State v. *Matthews*, 142 N. C. 621, 55 S. E. 342;
State v. *Beal*, 202 N. C. 266, 162 S. E. 561, 80 A. L. R. 1101;
State v. *Correll*, 229 N. C. 640.

If it should be determined that the Supreme Court of North Carolina erroneously decided the case, no question would be presented for determination by this Court for it has long been held that where a party is fully heard in the regular course of judicial proceedings, an erroneous decision of the state court is not a denial of due process within

the Fourteenth Amendment of the Constitution of the United States.

Bonner v. *Gorman*, 213 U. S. 86, 53 L. Ed. 709;
American Railway Express Co. v. *Kentucky*, 273 U. S. 269, 71 L. Ed. 539;
West Ohio Gas Co. v. *Public Utilities Commission*, 294 U. S. 63, 79 L. Ed. 761.

In *American Railway Express Co.* v. *Kentucky*, 273 U. S. 269, 71 L. Ed. 639, it is said, at page 273:

> "It is firmly established that a merely erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law."

IV

The Supreme Court is without jurisdiction to grant the writ of certiorari, for the petitioner failed to set up a claim of rights, privileges, or immunities under the Constitution of the United States in the State courts.

Although an attempt has been made to show that the questions set out in the Petition for writ of *certiorari* are not Federal questions or are not of sufficient substance and importance to justify the allowance of the writ, the State of North Carolina also contends that this Court is without jurisdiction to allow the petition, for the petitioner failed to set up any of these questions *as questions arising under the Constitution of the United States* in the State courts.

Careful examination of the Record will show that, although the Petitioner took exceptions to alleged errors of law, he failed entirely to set up specially any rights, privileges, or immunities claimed under the Constitution of the United States in either the Trial Court or the Supreme Court of North Carolina. The opinion of the Supreme Court of North Carolina treats the exceptions taken by the Peti-

tioner as raising questions of State law only. No Federal questions are mentioned. The petition for writ of *certiorari* filed in this Court omits any allegation that Federal questions were set up as such in the State courts.

Under the statute authorizing review by *certiorari* of decisions of the highest courts of the several states, jurisdiction of the United States Supreme Court to review decisions alleged to involve rights, privileges, or immunities under the Constitution is limited to cases in which the rights, privileges, or immunities are "specially set up or claimed."

28 U. S. C. 1940 ed., Sec. 344.

The rights, privileges, or immunities must be set up in the state courts.

Brooks v. *Missouri*, 124 U. S. 394, 31 L. Ed. 454;
Hartford Life Ins. Co. v. *Johnson*, 249 U. S. 490, 63 L. Ed. 722.

Conclusion

The questions set out in the petition are not Federal questions, or, if they are, the questions are not substantial and are not of sufficient importance to warrant consideration by the United States Supreme Court. None of these questions were set up in the State courts as questions arising under the Constitution of the United States. Therefore, the writ of *certiorari* should be denied.

Respectfully submitted,

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T. W. BRUTON,
Assistant Attorney General,
Counsel for the State of North Carolina, Respondent.